

SEP 25 2008

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

ASHLEY KING BARGE, ET AL. : DOCKET NO. 2:08-CV-0351  
  
VS. : JUDGE MINALDI  
  
CITY OF LEESVILLE, LOUISIANA, : MAGISTRATE JUDGE KAY  
ET AL.

**MEMORANDUM ORDER**

Before the Court is a Motion to Dismiss Pursuant to Rule 12(b)(6), or, Alternatively, Motion to Consolidate Suits, filed by the defendants City of Leesville et al. (hereinafter collectively "the defendants") [doc. 5]. The plaintiff, Ashley King Barge did not file an Opposition.

On February 7, 2008, Ms. Barge filed civil action 08-180 in this Court against the City of Leesville, Leesville Police Department, and the Vernon Parish Sheriff's Department. On the same day, Ms. Barge filed suit in the 30<sup>th</sup> JDC against the City of Leesville, certain unidentified Leesville City Police Officers, Sam Craft, and unidentified Vernon Parish Sheriff's Deputies.<sup>1</sup> On March 12, 2008, the City of Leesville removed this action to federal court.<sup>2</sup> Ms. Barge has since added Sam Craft to her 08-180 suit.<sup>3</sup>

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<sup>1</sup> Notice of Removal [doc. 1-1] (State Court Petition).

<sup>2</sup> Notice of Removal [doc. 1-1].

<sup>3</sup> Amended Compl. (March 31, 2008) [doc. 12].

The defendants request that this suit be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because “it appears that at least the same, if not more, causes of action have been alleged in suit No. 2:08-80.”<sup>4</sup> Alternatively, the defendants request that this Court consolidate the two suits.

Pursuant to Federal Rule of Civil Procedure 42(a):

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule 42(a) “vests a purely discretionary power in the district court.” *Whiteman v. Pitrie*, 220 F.2d 914, 918 (5th Cir. 1955). Once the court determines the actions involve a common question of law or fact, the court weighs the risk of prejudice and possible confusion versus the possibility of inconsistent adjudication of common factual and legal issues, the burden on the parties, witnesses, and judicial resources by multiple lawsuits, the length of time required to try multiple suits versus a single suit, and the relative expense required for multiple suits versus a single suit. *See Arnold v. Eastern Air Lines*, 681 F.2d 186, 193 (4th Cir. 1982).

In both suits, Ms. Barge sues the same defendants for the wrongful death of her father following his arrest. In each case, Ms. Barge alleges that officers in the Leesville Police Department and the Vernon Parish Police Department arrested her father, O’Shea King, on February 8, 2007. Ms. Barge alleges that Mr. King complained of chest pains and requested medical attention during his arrest and booking. On February 9, 2007, the officers transported Mr. King to a hospital, where he died that day due to complications from a heart attack. Given the almost identical factual allegations in both complaints, this Court concludes that there are

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<sup>4</sup> Def.’s Mem. in Support of Mot. to Dismiss, at 2 [doc. 5].

several common factual and legal issues. Because both lawsuits involve the same parties and arise out of the same facts, this Court finds that consolidation will reduce the burden on judicial resources, parties, and witnesses, minimize expenses for all parties, and eliminate the risk of inconsistent adjudication. Moreover, this Court does not find that consolidation will prejudice the plaintiff in any way, nor will consolidation result in confusion; accordingly,

IT IS ORDERED that the defendants' Motion to Dismiss Pursuant to Rule 12(b)(6), or, Alternatively, Motion to Consolidate Suits [doc. 5] is hereby GRANTED insofar as the above-captioned suit shall be CONSOLIDATED with 08-180.

Lake Charles, Louisiana, this 25 day of Sept, 2008.

A handwritten signature in black ink, appearing to read "P. Minaldi", written over a horizontal line.

PATRICIA MINALDI  
UNITED STATES DISTRICT JUDGE